

**N.D.A.G. Letter to Kloubec (Jan. 27, 1992)**

January 27, 1992

Representative Richard Kloubec  
District 51  
3233 16th Avenue S  
Fargo, ND 58103

Dear Representative Kloubec:

Thank you for your October 2, 1991, letter written on behalf of one of your constituents regarding the application of the sales tax and the motor vehicle excise tax where a car dealer-rental agency occasionally rents a motor vehicle that is being principally held for resale. I apologize for the delay. However, your constituent was contacted and indicated a desire to have the opinion withdrawn. After waiting for a withdrawal request for a considerable time, the constituent was contacted again and indicated he had changed his mind and wanted his questions answered.

You are concerned about the following factual situation. A car dealer-rental agency replaces cars in its rental fleet and puts the older cars up for resale. In this case, the value of the replacement cars is reduced by the value of the replaced cars for the purpose of calculating the value of the motor vehicle excise tax. N.D.C.C. § 57-40.3-01(4). N.D. Admin. Code § 81-05.1-01-04 provides in part:

When a dealer occasionally rents a vehicle on a daily basis and has not paid motor vehicle excise tax on the vehicle, such as one held for resale, the dealer is required to collect and remit sales tax at the current rate based on the daily rental charges.

The problem your constituent has with this situation is that:

[T]he used cars held for resale by the car rental agency are occasionally rented out if other cars are not available. The rental agency takes the position that an excise tax has in fact been paid on these cars and that, consequently, the rental of those units should be exempt from the state sales tax just like the rental income from the newer cars which are not being held for resale.

You ask whether the quoted language of N.D. Admin. Code § 81-05.1-01-04 is in conflict with relevant statutes if it is applied to the above-stated facts.

N.D. Admin. Code § 81-05.1-01-04 was duly approved by this office and promulgated by the Tax Commissioner giving it the force and effect of law. N.D.C.C. §§ 28-32-02 and 28-32-03. State v. Moore, 286 N.W.2d 274, 280 (N.D. 1979). However, a review of the

unique factual circumstances that you have set forth reveals that N.D. Admin. Code § 81-05.1-01-04 does not apply.

The motor vehicle excise tax is imposed on the "purchase price" of a motor vehicle. N.D.C.C. § 57-40.3-02. The "purchase price" is defined by N.D.C.C. § 57-40.3-01(4), which provides: "[i]n instances in which a licensed motor vehicle dealer places into his service a new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value if the new vehicle is properly registered and licensed." (Emphasis supplied.)

It is a general rule of construction that words in a statute are to be understood in their ordinary sense, unless a contrary intention plainly appears. N.D.C.C. § 1-02-02. A reading of the above underscored language in N.D.C.C. § 57-40.3-01(4) in its ordinary sense requires that the value of a replaced vehicle (trade-in) can only be taken after it has been replaced. If a vehicle held for resale continues to be rented, even on an infrequent basis, it has not been replaced for the purpose of the computation of the motor vehicle excise tax. Consequently, the trade-in deduction cannot be allowed and the motor vehicle excise tax is due for the entire purchase price of the new motor vehicle.

I trust this answers your question.

Sincerely,

Nicholas J. Spaeth

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